

**STATE OF VERMONT
PUBLIC SERVICE DEPARTMENT**

24 V.S.A. § 4352 Determination No. 15

**DETERMINATION OF ENERGY PLANNING COMPLIANCE PURSUANT TO
24 V.S.A. § 4352 FOR TWO RIVERS-OTTAUQUECHEE REGIONAL COMMISSION'S
REGIONAL PLAN AND ENERGY IMPLEMENTATION PLAN**

I. INTRODUCTION

Today, in my capacity as the Deputy Commissioner of the Vermont Public Service Department (“Department”)¹, I have issued the attached certificate memorializing my affirmative determination pursuant to 24 V.S.A. § 4352(a) that the Two Rivers-Ottauquechee Regional Plan (“TRORP”) complies with the requirements of 24 V.S.A. § 4352 for enhanced energy planning.² This determination is made solely as to whether the TRORP complies with the statutory planning requirements of 24 V.S.A. § 4352. This determination does not mean that the Department endorses the substantive policy judgments contemplated or promoted in these plans. Additionally, I hereby record the procedural history leading to the compliance determination, as well as a report of the public comments the Department received. Finally, some observations are offered that may prove helpful to other regional planning commissions and municipalities that choose to seek enhanced energy planning compliance determination under 24 V.S.A. § 4352 including after readopting a new regional plan.

¹ Commissioner June. E. Tierney recused herself in order to avoid any appearance of a conflict of interest as she is a resident of the area served by the Two Rivers-Ottauquechee Regional Commission.

² The TRORP was adopted on July 15, 2020 and became effective on August 19, 2020.

II. PROCEDURAL HISTORY

On August 31, 2020, the Two Rivers-Ottauquechee Regional Commission (“TRORC”) submitted the TRORP (the “Plan”) for a determination of compliance with the enhanced energy planning standards set forth in 24 V.S.A. § 4352.

On September 3, 2020, notice of a public hearing scheduled for September 29, 2020 was emailed directly to the TRORC.

On September 3, 2020, the Department solicited recommendations from the Secretaries of Agriculture, Food, and Markets; Commerce and Community Development; Natural Resources; and Transportation as to whether the Plan should be certified as compliant with the requirements of 24 V.S.A. § 4352. The Department received responses from the Agencies of Agriculture, Food, and Markets (“AAFMM”), Natural Resources (“ANR”), Commerce and Community Development (“ACCD”), and Transportation (“AOT”).

On September 4, 2020, notice of a public hearing scheduled for September 29, 2020 was posted on the Department’s website.

On September 9, 2020, notice of a public hearing scheduled for September 29, 2020 was published in the Valley News and Journal Opinion.

On September 10, 2020, notice of the September 29, 2020 public hearing was published in the Herald of Randolph.

On September 11, 2020, notice of the September 29, 2020 public hearing was published in the Vermont Standard.

On September 29, 2020, the Department convened a public hearing via the Microsoft Teams Platform.

III. AGENCY COMMENTS

Agency of Commerce and Community Development

ACCD stated that it did not have any comments on the Plan.

Agency of Transportation

AOT stated that it did not have any recommendations for changes to the Plan.

Agency of Natural Resources

ANR stated that it did not intend to comment on the proposed certification of the Plan given that, other than updates to the data, TRORC stated in their cover letter that the goals, policies, and recommendations of the energy portion of the plan had remained the same as those from the 2017 certification.

Agency of Agriculture, Food, and Markets

AAFM commented that the Plan generally met the statutory planning requirements of 24 V.S.A. § 4352. In addition, AAFM provided updated information on woody biomass and invasive species concerns, requested the Plan consider on-farm methane digesters and small-scale, non-ridgeline wind (ex. such as located on agricultural land) as potential sources of renewable energy, and highlighted several incorrect references.

IV. PUBLIC COMMENTS

I thank the members of the public who took the time to provide me with feedback on the Plan and this review process, whether in writing or by speaking at the September 29th public

hearing. It has been both my duty and privilege to listen to and consider these public comments. This determination decision I am statutorily charged with making affects the lives of the citizens of the Two Rivers-Ottawaquechee Regional Commission's service area and I have not undertaken it lightly. What follows is a summary description of the comments the Department received:

Members of the public expressed several concerns regarding how the Plan discusses aspects of siting of renewable generation. In particular, members of the public raised issues around standards for managing the noise generated by wind turbines, the extent to which siting of wind generation should be conducted at the regional versus municipal level, and the method for classifying lands protected from solar development. Public comments also touched on the need to maximize the carbon sequestration of the region's forests.

While most of these comments were not strictly related to the determination I must make today, they highlight the importance of these issues to the residents of the area served by the TRORC. I appreciate and welcome the engagement in both regional and local energy planning.

V. DEPARTMENT OBSERVATIONS

Act 174 created a new energy planning process in Vermont for regional planning commissions ("RPCs") and municipal planning bodies. Pursuant to this process, an RPC has the option of submitting its duly adopted regional plan to the Commissioner of the Public Service Department for an affirmative determination of compliance with the statutory standards of 24 V.S.A. § 4352. When a regional plan has received an affirmative compliance determination under Section 4352, the Vermont Public Utility Commission is required to afford substantial deference in Section 248 proceedings to the land conservation measures and specific policies

contained in such a duly-adopted regional plan when reviewing any proposed electric generation facility in the region covered by that plan.

While a regional plan that has received an affirmative determination of energy planning compliance must be given substantial deference by the Public Utility Commission when reviewing the siting impact of a project, such as under the "orderly development" criterion of Section 248(b)(1), that does not mean that the regional plan automatically or ultimately decides whether a project will receive a Section 248 permit. Rather, a regional plan that has been determined to comply with 24 V.S.A. § 4352 will only serve, as warranted, to inform the several statutory criteria the Commission must apply when considering whether a proposed project should receive a Section 248 permit.

Pursuant to 24 V.S.A. § 4348b(a), regional plans expire every eight years, thereby requiring plan amendments or updates and adoption or readoption at that time, although there may be other circumstances that might cause an RPC to update their plan before the end of the eight year period. Under 24 V.S.A. § 4352(h), an affirmative determination of energy compliance issued remains in effect until either the end of the period for expiration or the plan is readopted. Thus, once a plan has been readopted or expired, the RPC must submit their new plan for determination of compliance with 24 V.S.A. § 4352.

The Department views each iteration of the regional plans and their determination of compliance with 24 V.S.A. § 4352 as an important part of the planning process. Each new plan provides an opportunity to review, update, and reflect changes within the community since the adoption of the previous plan and the energy element. As such, the Department asks that RPCs and municipalities take steps to make updates to the extent possible, ensuring the data, goals, and recommendations reflect current reality of the region. Such updates will prove key to effectively

taking actions and measuring progress toward reaching the state's clean energy and greenhouse gas reduction targets.

Finally, the TRORC included a number of recommended action items directed toward this Department. For example, Recommendation #6 on page 240 of the Plan states, "DPS should work with fuel dealers to encourage them to become energy service providers." While it is important for the TRORC to consider action items beyond their direct control as such actions can have an impact upon planning for their region's energy future, these action items are not binding upon the Department.

VI. CONCLUSIONS

Based on my review of the Plan, I have determined that it complies with the requirements of 24 V.S.A. § 4352.

Dated at Montpelier, Vermont this 30th day of October 2020.

VERMONT PUBLIC SERVICE DEPARTMENT

A handwritten signature in black ink, appearing to read "Riley Allen", written over a horizontal line.

Riley Allen, Deputy Commissioner
Vermont Public Service Department